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In re Application of :
OSTGAARD :
Application No.: 09/486,549 : NOTIFICATION
PCT No.: PCT/NO98/00232 :
Int. Filing Date: 05 August 1998 :
Priority Date: 27 August 1997 :
Attorney Docket No.: 3111-24 :
For: SAFETY BOX/INCINERATION CONTAINER :
FOR USED SYRINGES :

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 05 August 1998, applicants filed international application PCT/NO98/00232, which claimed a priority date of 27 August 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 18 March 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 08 January 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 February 2000.

On 25 February 2000, applicants filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee to Deposit Account No. 50-0951.

On 25 February 2000, applicants filed a second TRANSMITTAL LETTER (Form PTO-1390) for entry into the national stage in the United States which was also accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee to Deposit Account No. 50-0951.

On 23 May 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form DO/EO/905) indicating, *inter alia*, that the declaration submitted 25 February 2000 did not comply with 37 CFR 1.497(a)-(b) and that thus a

new declaration was required.

On 07 July 2000, applicants submitted a communication stating that "two separate applications" for U.S. patent were filed on 25 February 2000: one in a package having Express Mail Label No. EE683174140US;¹ and the other having Express Mail Label No. EE683174153US.² The communication states that according to the two return post cards for each of these "two respective applications", both applications have been assigned the same serial no. 09/486,549. The communication then asks for the status and correct serial number for these "two separate patent applications" based on the assumption that the two separate packages could not have been assigned the same serial number.

On 25 September 2000, applicants submitted a response to the NOTIFICATION OF MISSING REQUIREMENTS, which was accompanied by, *inter alia*, a declaration of the inventor.

On 07 February 2001, the USPTO mailed a Notification indicating that since only one national stage of a PCT application is permitted, it was proper to place both sets of papers filed 25 February 2000 in one application file. The Notification also indicated that the declaration filed 25 September 2000 complied with 37 CFR 1.497(a)-(b) and that the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date had been charged to Deposit Account No. 50-0951. Finally, the Notification indicated that the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000.

DISCUSSION

As noted above, the Transmittal Letter filed 25 February 2000 included an authorization to charge Deposit Account 50-0951. However, this Deposit Account did not list Peter J. Manso, the attorney signing the Transmittal Letter containing the Deposit Account authorization, as an authorized user on 25 February 2000. Nor was the firm itself listed as an authorized user on 25 February 2000. (The firm name did not appear on the transmittal letter. However, it did appear in the declaration of the inventor (non-executed) filed 25 February 2000.) Thus, the application is abandoned as to the United States of America for failure to pay the basic national fee by thirty months. An authorized user of the Deposit Account was not listed in the submission filed 25 February 2000. Accordingly, the NOTIFICATION OF MISSING REQUIREMENTS mailed 23 May 2000 is hereby VACATED. Also, the portion of the Notification mailed 07 February 2001 indicating that the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000 and the portion indicating that the surcharge under 37 CFR 1.492(e) was charged to deposit account 50-0951 (again, an authorized user of the Deposit Account was not listed in the papers

¹The submission filed 07 July 2000 incorrectly identifies this Express Mail Label No. as EEG83174140US.

²The submission filed 07 July 2000 incorrectly identifies this Express Mail Label No. as EEG683174153US.

filed 25 September 2000) are also hereby VACATED.

CONCLUSION

For the reasons set forth above, the NOTIFICATION OF MISSING REQUIREMENTS mailed 23 May 2000 is hereby **VACATED**.

For the reasons set forth above, the portions of the NOTIFICATION mailed 07 February 2001 indicating that the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000 and that the surcharge under 37 CFR 1.492(e) was charged to deposit account 50-0951 are hereby VACATED.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Applicants may wish to consider filing a petition under 37 CFR 1.137 to revive the application.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for preparation and mailing of a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the U.S. basic national fee has not been paid and that the user of the deposit account is not listed as an authorized user.



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